



[Redacted]

18 February 2021

Subject: Appeal FAC 299/2019 in relation to licence CN84568

Dear [Redacted]

I refer to your appeal to the Forestry Appeals Committee (FAC) against the decision by the Minister for Agriculture, Food and Marine in respect of Afforestation approval CN84568.

The FAC established in accordance with Section 14 A (1) of the Agriculture Appeals Act 2001 has now completed an examination of the facts and evidence provided by the parties to the appeal.

Background

Afforestation licence CN84568 was granted by the Department of Agriculture, Food and the Marine (DAFM) on 4 October 2019.

Hearing

An oral hearing of appeals FAC 299/2019, 304/2019 & 306/2019 in relation to licence CN84568, of which all parties were notified, was held by the FAC on 18 January 2021.

In attendance:

FAC Members:

Mr. Myles Mac Donncadha (Chairperson), Ms. Mary Lawlor & Mr. James Conway.

Appellants:

Applicant / Representative(s):

Department Representative(s):

Secretary to the FAC:

[Redacted]
Mr. Martin Regan & Ms. Mary Coogan
Ms. Emma Guerin

Decision

The Forestry Appeals Committee considered all of the documentation on the file, including application details, processing of the application by DAFM, and the grounds of appeal before deciding to set aside and remit the decision of the Minister to grant this Afforestation (Reference CN84568).

The proposal is for afforestation of 3.41 hectares of enclosed land in Derrinvoney Upper, Co. Leitrim. It consists of two non adjoining plots in close proximity 1) 3.06 hectares with an mixture of Sitka spruce (85%) and additional broadleaves (15%) and 2) 0.35 hectares Common Alder. Ground preparation would include woody weed removal and mounding, the planting method is to be slit planting, with up to 250kg granulated rock phosphate per hectare to be applied. Herbicide control is proposed in years 0, 1, 2 and 3.

The soil types underlying the project area are predominantly podzolic in nature and the slope is stated to be flat to moderate (<15%). The project area does not adjoin or contain an aquatic zone. The vegetation type within the project area comprises grass/rush. The site is located within the Upper Shannon WFD Catchment and sub-catchment of Owengar (Leitrim)_10.

The DAFM desk assessed the proposal and undertook a screening for Appropriate Assessment that identified three European sites within 15km. The screening determined that an Appropriate Assessment was not required, with reasons given for screening out each of the three sites identified. The DAFM issued a licence on 4th October 2019 with standard conditions and a specific silvicultural condition that plot 2 should comprise 30% Oak, evenly distributed.

There are three appeals against the decision. The grounds of the first appeal is in the nature of a broad statement that, based on the information available to the public, any approval would not be in compliance with the Environmental Impact Assessment and Habitats Directives, while referring to court judgements.

The grounds of the second appeal include; No registered rights of way, what is there is a very narrow foot pass through our/my lands, the foot pass has never been registered with the land registry, (that is not to say they do not have a right of way because of the long usage, it would only every been agreed by word of mouth), the road is not fit for forestry machinery, the impact it will have on such beautiful place, the people that love to walk along the old road without it being dark and gloomy, these dark woods are very frightening, I feel it would be very intrusive on our landscape and on the farm itself and we need to aim for sustainable farming and forestry.

The third appeal outlines grave concerns regarding the increase in forest cover generally in the area and county and it highlights a lack of referral to Leitrim County Council and the EPA for comment under the River Basin Management Plan 2018 —2021 as it is within the Lough Allen catchment area, that Lough Allen is a priority area for protection and improving water quality under the Local Authority Water Programme (LAWPRO) and that these lands drain into Lough Allen and we have grave concerns in relation to the use of herbicides for the first four years in the establishment of this monoculture crop at this location. It contends that the Forest Service has given no consideration to the cumulative impact this further plantation will have on the environment of this area or the social fabric of the community of this area and there is a lack of confidence in the application of Appropriate Assessment processes and the protection of biodiversity, also it claims it was unable to identify road access which is said to be provided but find this questionable.

The DAFM responded to the grounds of appeal stating that the licence application had been processed according to their procedures; SI 191 of 2017 and the Forestry Act 2014, that all criteria were adhered to and that it will be necessary to clarify access prior to commencement of works.

At the oral hearing the DAFM provided an overview of the processing of the application, clarified that no in-combination assessment of the proposal under Appropriate Assessment was done, outlined reasons for adding the condition to plant 30% Oak in plot 2 to the licence, that no relevant watercourse is present on the project area, that the project area is not directly linked to Lough Allen, accepted its importance but pointed out it was not a Natura 2000 site, contended that the DAFM's forestry and water standard requirements will adequately ensure no threat to water quality, explained considerations regarding access and the future stages of DAFM approval. The appellant in attendance advanced his written grounds of appeal, raising concerns regarding access, additional afforestation near Lough Allen, a recent land slide in the area, that the event occurred 1 - 2km from the proposal, habitat and foraging ground loss issues and lack of referral to the EPA.

In addressing the grounds of appeal, the FAC considered, in the first instance, the contention that the proposed development should have been addressed in the context of the EIA Directive. The EU Directive sets out, in Annex I a list of projects for which EIA is mandatory. Annex II contains a list of projects for which member states must determine through thresholds or on a case by case basis (or both) whether or not EIA is required. Neither afforestation nor deforestation (nor clear-felling) are referred to in Annex I. Annex II contains a class of project specified as "initial afforestation and deforestation for the purpose of conversion to another type of land use" (Class 1 (d) of Annex II). The Irish Regulations, in relation to forestry licence applications, require the compliance with the EIA process for applications relating to afforestation involving an area of more than 50 hectares, the construction of a forest road of a length greater than 2000 metres and any afforestation or forest road below the specified parameters where the Minister considers such development would be likely to have significant effects on the environment. The decision under appeal relates to a licence for the afforestation of an area of 3.41 hectares, so is significantly sub-threshold for

mandatory environmental impact assessment (EIA), as set in Irish Regulations. The DAFM considered the application across a range of criteria, including water, designated areas, landscape and cumulative effects, and determined that the project was not required to undergo the EIA process.

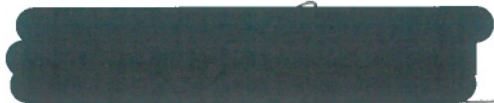
Regarding other contentions raised with regard to the environment, such as the lack of referral and water quality, landscape, the FAC reviewed the material submitted by all parties to the appeal. The area is rural and agricultural in nature, with a dispersed settlement pattern. The proposal area is surrounded by grassland, does not join a public road and does not adjoin or contain an aquatic zone, part of the Diffagher River is to the north of the site and across the public road flowing south westerly and later southwards to flow into Lough Allen. The publicly available EPA maps and data confirm the proposal area is in the Owengar (Leitrim)_010 sub catchment and Upper Shannon WFD catchment, and the river waterbody for the area, Diffagher_010 has a good WFD status and Lough Allen has a moderate status (per the WFD status assessment 2013 – 2018). The proposal is not in a referral zone or of a scale that triggers a DAFM referral, as per the DAFM Forestry Standards Manual, November 2015 and the Leitrim County Development Plan 2015 – 2021 categorised the area as being of High Capacity to accommodate forestry. No evidence was provided of the presence of any protected habitats or species on the proposal area, and the FAC does not consider that there is any evidence before it that this proposal would result in a significant effect on species in the area. The proposal is considered modest in scale at 3.41 hectares on a flat to moderate slope, at modest elevation, with hedgerows but no relevant watercourse identified on site. Therefore having regard to the record of the decision and the submitted grounds and the nature, scale and location of the proposal the FAC is satisfied that the proposal would not result in any likelihood of significant effects on the environment and that the DAFM did not err in the decision regarding EIA.

Under Article 6(3) of the Habitats Directive, any plan or project not directly connected with or necessary to the management of a European site, must be subject to an assessment of the likely significant effects the project may have on such a designated site, either individually or in combination with other plans projects, having regard to the conservation objectives of that designated site. In this case, the DAFM undertook a Stage 1 Appropriate Assessment screening, and found three European sites within 15 km of the proposal area, and that there was no reason to extend the zone of influence in this case. The sites identified were Boleybrack Mountain SAC, Cuilcagh Anierin Uplands SAC and Lough Gill SAC. The FAC consulted publicly available information from the NPWS and EPA and identified the same three sites. The DAFM considered each site in turn and listed the associated qualifying interests and the reasons for their screening conclusions, namely, the absence of any aquatic zone within or adjoining the project area and the absence of any significant relevant watercourse(s) within or adjoining the project area. However the FAC found there was an absence of consideration of in combination effects with other plans and projects in the vicinity. The FAC considers this matter a significant error in the making of the decision to grant the licence.

In relation to the grounds regarding access to the proposal areas, the DAFM in their response at the oral hearing referred to their procedures with regard to any further approvals of the licenced area and of seeking clarifications on any legal matters, such as ownership and access if required, prior to issuing any grant aid, but that this specific matter is generally considered to be between land owners, but further added in this case in their statement to the FAC and at the hearing that it would be better to clarify access prior to commencement of works. They also referred to markings of an access track from the road to the main plot on 6 inch Ordnance Survey maps, but none appeared for the smaller plot, but they had little concerns regarding this, as it is to consist of Common Alder and Oak and that the Oak will take over the plot in time and it has an exceptionally long growing pattern. The FAC having considered the appellants' concerns, noted that the applicant in his submission for approval had stated yes, they had adequate access, and considered there is a responsibility on applicants to be honest in their submission and should they later not prove to have access that they would have to bear the consequences. In addition, the FAC noted the proposal from DAFM that they seek clarification on access prior to commencement of works in this case.

In considering the appeal the FAC had regard to the record of the decision, the submitted grounds of appeal and submissions received including at the oral hearing. The FAC is satisfied that a significant error was made in making the decision regarding CN84568 and is setting aside and remitting the decision back to the Minister to undertake an appropriate assessment screening of the proposal itself and in combination with other plans or projects under Article 6 of the EU Habitats Directive before a new decision is made.

Yours sincerely,

A large black rectangular redaction box covers the signature area.

Mr. James Conway (on behalf of the Forestry Appeals Committee)